

August 1, 2014

VIA ECF

Honorable Martin Glenn
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Courtroom 501
New York, New York 10004

Re: *In re Dewey & LeBoeuf LLP*, No. 12-12321 (MG) (Bankr. S.D.N.Y.)

Dear Judge Glenn:

Defendants in certain clawback adversary proceedings in the above-captioned matter¹ intend to file a joint motion for partial summary judgment with respect to certain claims of Alan M. Jacobs, as Liquidating Trustee of the Dewey & LeBoeuf Liquidation Trust ("Trustee"). Defendants submit this letter to request a pre-motion conference pursuant to Paragraph I.1 of the Case Management and Scheduling Order entered by this Court on March 31, 2014, and Local Rule 7056-1(a) of the Bankruptcy Court of the Southern District of New York.²

Defendants are alleged to be former partners of the Debtor, Dewey & LeBoeuf LLP ("Dewey"). The Trustee alleges, among other things, that Dewey made distributions to the Defendants while it was insolvent and that these distributions are avoidable as constructively fraudulent transfers under the federal Bankruptcy Code and New York Debtor and Creditor Law. Defendants anticipate that in their motion for partial summary judgment, they will argue that the Trustee may not avoid these transfers to the extent Defendants provided fair consideration or reasonably equivalent value to Dewey in exchange for the distributions. Specifically, Defendants expect to address the following issues:

- The applicability of Section 548(b) of the Bankruptcy Code to the Defendants.
- The applicability of Section 277 of the New York Debtor and Creditor Law to the Defendants.
- Whether services provided, work performed or business generated by the Defendants can constitute reasonably equivalent value under the Bankruptcy Code or fair consideration under the New York Debtor and Creditor Law.

¹ The Defendants are John J. Altorelli (Adversary No. 14-01015), David R. Greene (Adversary No. 14-01797), William C. Marcoux (Adversary No. 13-01687), L. Londell McMillan (Adversary No. 13-01772), Steven P. Otilar (Adversary No. 14-01818), Anthony W. Shaw (Adversary No. 13-01771), Michael Steele (Adversary No. 14-01795), and Ronald W. Zdrojeski (Adversary No. 14-01794).

² Submission of this letter is without prejudice to any pending or future motions in the District Court to withdraw the reference to this Court. Submission of this letter also does not constitute (i) a submission of any signatory hereto to this Court's jurisdiction or (ii) an admission that this Court has jurisdiction in any of the adversary proceedings referenced herein.

- Whether Dewey's payments to departing/de-equitized partners, pursuant to the firm's partnership agreement, or other arrangements (such as severance), should be treated as payments of a debt rather than as distributions on equity.

In Defendants' motion, they will seek a decision from this Court that each of them, in his or her adversary proceeding, is entitled to a credit for the value of the services he or she provided to Dewey as a partner of the firm. Defendants have informed the Trustee that they intend to seek partial summary judgment on these issues. The Trustee has informed Defendants that he intends to cross-move for a holding that partners of an LLP are "insiders" who are not entitled to a fair consideration defense as a matter of law; or, alternatively, that it is possible for an LLP partner to be an insider, depending on, among other things, his or her level of control.

The parties have agreed to the following schedule for the motion:

- August 5: Pre-motion conference.
- August 12: Defendants file motion for partial summary judgment.
- September 2: Trustee files opposition to Defendants' motion, and any cross-motion related to the issues above.³
- September 19: Defendants file reply in support of their motion, and opposition to any cross-motion related to the issues above.
- September 26: Trustee files reply in support of any cross-motion related to the issues above.
- October 1 or 2: Hearing on Defendants' motion and any cross-motion related to the issues above.

In accordance with this schedule, the parties respectfully request that the Court hold a pre-motion conference Tuesday, August 5, 2014 and that the Court reserve October 1 or 2 for a hearing on the motion and any cross-motion related to the issues above. The parties are available to answer any question the Court may have.

³ In this schedule, cross-motions by the Trustee will be limited to the issues listed in this letter.

Respectfully submitted,

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